Nos. 17-1717, 18-18

IN THE

Supreme Court of the United States

THE AMERICAN LEGION, *et al.*, *Petitioners*

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*, *Respondents*

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *Petitioner*

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*, *Respondents*

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICI CURIAE* FAMILY MEMBERS OF SOLDIERS NAMED ON THE PEACE CROSS IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

Amici Alvergia Guyton, Roberta "Sue" Jenkins, Robert B. Wilson, and Mary Fenwick Laquay are family members of fallen soldiers named on the Peace Cross. Because these soldiers died too young to leave children of their own, *amici*, their nieces and nephew, seek to preserve their legacies. To that end, *amici* desire that the Peace Cross be allowed to stand, safeguarding the memory of their family members' service across generations. *Amici* would experience pain, distress, and betrayal if the very government for which their family members fought destroys or disfigures the monument that honors their families' sacrifices.

ALVERGIA GUYTON is the niece of Private John Henry Seaburn, Jr., one of the 49 men whose names are emblazoned on the Peace Cross. Ann E. Marimow & Michael E. Ruane, *A World War I Cross Under Siege*, WASH. POST (Sep. 21, 2018).[2] All her life, Ms. Guyton grew up hearing her relatives repeat the refrain: "John Seaburn's name is at the Peace Cross." *Id.* Their stories about her uncle intrigued her, and a particular photograph of him brought

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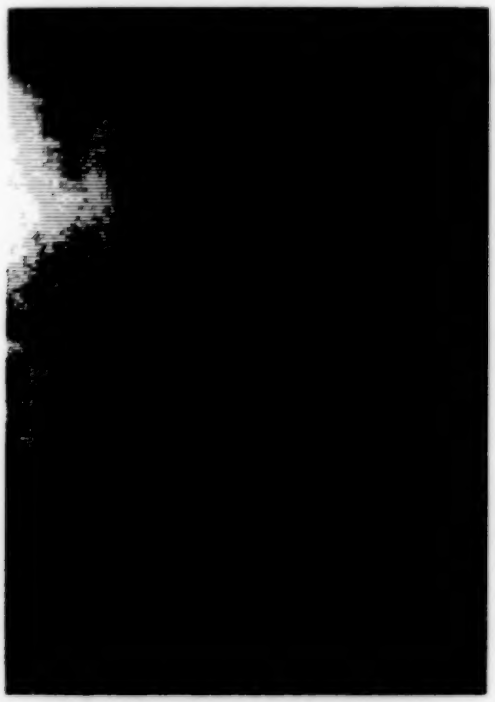
[1] The parties have consented to the filing of this brief, and letters confirming such consent have been lodged with the Clerk or accompany this brief. No counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation of this brief.

[2] *Available at* https://www.washingtonpost.com/graphics/2018/local/maryland-peace-cross/?noredirect=on&utm_term=.3050f345f20a.

those stories to life. Ms. Guyton remembers talking to the photograph of the uniformed John Seaburn, shown below, imagining he was her childhood playmate.



Photograph of John Henry Seaburn[3]

A native of North Brentwood, Maryland, she recalls passing by the Peace Cross at least once a week. Now 84, Ms. Guyton resides in a Maryland senior

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[3] Photo of John Henry Seaburn (copy on file with Prince George's African American Museum and Cultural Center at North Brentwood).

community with her husband, Colonel James Guyton (Retired). *Id.*

John Seaburn was a private in the 372nd Regiment, 93rd Division, an all-African American unit that served in World War I. *Id.* He grew up in North Brentwood, Maryland, and joined the Army at age 16. *Id.* In March of 1918, he deployed to France. App.1.[4] In one of many letters home to his mother and sisters, Seaburn wrote: "I think I will be home soon."[5] Months later, however, on November 21, 1918, John Seaburn's mother received a telegram: "Deeply regret to inform you that it is officially reported that Private John H. Seaburn infantry died October fourth from wounds receive[d] in action." App.2. He was killed just days before his 21st birthday, and 38 days before the war ended. Six years after his death, John Seaburn's family remembered him with a poem published in a Washington, D.C. newspaper. App.3. The poem emphasized the family's desire to preserve his memory, and included the following line:

> Forget you? No, we never will.
> We loved you then, we love you still.

Id.

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[4] "App." refers to the appendix *amici* filed with this brief.

[5] Letter from John Henry Seaburn to Annie Seaburn (May 7, 1918) (on file with Prince George's African American Museum and Cultural Center at North Brentwood).

John Seaburn was buried at a military cemetery in Auve, Marne, France. A cross marked his grave. App.4. Ms. Guyton remembers visiting that cemetery with her mother—John Seaburn's sister—when her husband was stationed in Europe. Ms. Guyton remembers the very moment her mother caught sight of John Seaburn's name at the cemetery, inscribed on a plaque as it is now inscribed on the Peace Cross.

Ms. Guyton fears that without the Peace Cross drawing attention to John Seaburn's name, future generations may forget John Seaburn's part in her county's history of courageous service by African American soldiers: "It's history, and people can't see it when they start tearing it down. You're robbing the next generation." Marimow & Ruane, *supra* (quoting Ms. Alvergia Guyton).

To preserve John Seaburn's memory, Ms. Guyton donated her family's records of John Seaburn to the Prince George's African American Museum and Cultural Center at North Brentwood. There, a notice describing John Seaburn's story informs the public that "[a] monument, located in Bladensburg, Maryland, was completed and dedicated in 1925 as a Peace Cross to honor the men of Prince George's County who were killed in World War I. . . . John Henry Seaburn's name is located on the Peace Cross Monument."[6]

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[6] Story of John Henry Seaburn (on file with Prince George's African American Museum and Cultural Center at North Brentwood).

ROBERTA "SUE" JENKINS ("Ms. Jenkins") and ROBERT B. WILSON ("Mr. Wilson") are the niece and nephew of Walter Ernest Wilson, a fallen soldier named on the Peace Cross. "Uncle Ernest," as he is known to Ms. Jenkins and Mr. Wilson, died of meningitis at Camp Gordon, Georgia, before he could see combat. *Id.*

Ms. Jenkins attends St. Paul's Episcopal Church in Brandywine, Maryland, where her uncle Ernest Wilson is buried. *Id.* Inside the church, a painting honoring him reads, "For God and Country," *id.*, and a wall table bears his name. The thought of cutting the arms off the Peace Cross gives Ms. Jenkins chills.

Ms. Jenkins' brother Robert B Wilson learned as a child that his uncle Ernest Wilson's name appears on the Peace Cross. Like his Uncle Ernest, Mr. Wilson entered the military, serving in the U.S. Navy for 23 years. After retiring from the Navy, Mr. Wilson helped oversee the design and construction of the World War II Memorial on the National Mall in Washington, D.C. He strongly believes in honoring fallen soldiers like Ernest Wilson, the uncle he never met, with permanent memorials like the Peace Cross. He does not want to see the memorial torn down or disfigured.

MARY FENWICK LAQUAY ("Ms. Laquay") is a niece of Private Thomas Notley Fenwick, First Class, 115th Regiment, 29th Division, U.S. Army. His name is on the Peace Cross. *Id.*

Thomas Fenwick grew up in Hyattsville, Maryland, where he was a standout pitcher on the

town's baseball team. App.5. He died of pneumonia on October 7, 1918, following a gas attack while fighting in France. Marimow & Ruane, *supra*. His mother received news of her son's burial on Christmas Day that year. App.6. He was buried in a cross-marked grave at an American Cemetery in Mars-sur-Allier, Nievre, France. *Id.*

Thomas Fenwick was the older brother of Ms. Laquay's father. Ms. Laquay remembers her father pointing out his brother's name on the Peace Cross when she was a young child. Though Ms. Laquay never met her uncle, she grew up hearing stories about him, and has always imagined her uncle as her father described him: an older brother carrying her father around on his shoulders.

Ms. Laquay still resides in Maryland near the Peace Cross, and frequently drives by it. Each time, she feels like she is driving by a cemetery. "I know he's not buried there," she explains, "but that is how I experience it." Ms. Laquay associates the Peace Cross with the young soldiers named on it. For her, tearing down the Peace Cross would be like digging up their graves.

Amici hope that the names John Henry Seaburn, Walter Ernest Wilson, and Thomas Notley Fenwick will forever remain etched on the Peace Cross and remembered in the history of Prince George's County.

SUMMARY OF ARGUMENT

The 93-year-old Bladensburg Peace Cross commemorates 49 soldiers from Prince George's

County, Maryland, including family members of *amici*, who gave their lives during World War I. The Constitution does not require its destruction.

Public memorials with a commemorative or civic function do not violate the First Amendment simply because they incorporate religious symbols. To the contrary, religious symbolism is a common thread that connects our most cherished monuments and buildings, from the Washington, Jefferson, and Lincoln Memorials to federal courthouses, from the Chamber of the United States House of Representatives to large cross-shaped memorials at Arlington National Cemetery. The Establishment Clause has never been understood to forbid the government from using symbols with both religious and civic meanings.

Three factors recognized by this Court weigh heavily in favor of allowing the Peace Cross to stand:

- In his controlling *Van Orden* concurrence, Justice Breyer described the 40-year age of a monument as "determinative" when concluding that it did not violate the Establishment Clause. If longevity carried great weight in that case, it carries far greater weight here: the Peace Cross has stood for five decades longer than the Ten Commandments monument in *Van Orden*.

- The history underlying the shape of the Peace Cross is an independent reason for concluding that it does not violate the Establishment Clause. Its cross shape serves expressive

functions, evoking the expansive cross-dotted graveyards in foreign fields where Americans were interred after giving their lives in The Great War and drawing attention to the particular Americans it honors.

- The "disrespect," "division," and "disturbing symbolism" that would follow from the Peace Cross's destruction also weigh heavily in favor of preserving it. That pain and disturbance is not theoretical for *amici*. Destroying the Peace Cross would sever a cherished connection to their family histories and dishonor their family members' sacrifices.

Consistent with its precedents, this Court should conclude that the Establishment Clause does not require the government to deprive *amici* and the Bladensburg community of this symbol honoring their war dead.

ARGUMENT

I. The Establishment Clause Does Not Require Removal Of A Memorial That Intertwines Religious Symbolism With Historical, Commemorative Functions.

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I. It does not mandate the wholesale destruction, dismantling, or disfigurement of public memorials that use religious symbols. This Court has explained that the Establishment Clause "does not require eradication of all religious symbols in the

public realm" or the avoidance of "any public acknowledgment of religion's role in society." *Salazar v. Buono*, 559 U.S. 700, 718-19 (2010) (plurality opinion). As Justice Breyer wrote in his controlling *Van Orden v. Perry* concurrence, "the Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious." 545 U.S. 677, 699 (2005); *see also id.* at 690 (plurality opinion) ("Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause"); *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952) (plurality opinion) (the government "follows the best of our traditions" when it "respects the religious nature of our people.").

For this reason, this Court has rejected Establishment Clause challenges to public memorials and depictions that incorporate religious symbolism and messages. *Van Orden*, 545 U.S. at 688-92 (rejecting Establishment Clause challenge to Ten Commandments display on Texas State Capitol grounds due to display's reflection of the Commandments' significance in our national history and culture); *Lynch v. Donnelly*, 465 U.S. 668, 680-81 (1984) (rejecting Establishment Clause challenge to nativity scene in city's Christmas display because "[t]he crèche in the display depicts the historical origins of this traditional event long recognized as a National Holiday"); *see also Salazar*, 559 U.S. at 721 (stating, in dicta discussing Establishment Clause claim below which was not presented for the Court's consideration, that "a Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic

acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people.").

These outcomes are not surprising, as religious references have appeared prominently in public life throughout American history. *See Lynch*, 465 U.S. at 674 ("There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789."). Religious words and symbols are common in many of our most cherished national monuments. American "monuments and buildings reflecting the prominent role of religion abound. For example, the Washington, Jefferson, and Lincoln Memorials all contain explicit invocations of God's importance." *Van Orden*, 545 U.S. at 689 n.9. "Laus Deo" ("Praise be to God") is inscribed on the apex of the Washington Monument. *Id.* The walls of the Jefferson Memorial are carved with some of Jefferson's most famous statements, several of which reference God as a central theme. One reads:

> God who gave us life gave us liberty. Can the liberties of a nation be secure when we have removed a conviction that these liberties are the gift of God? Indeed I tremble for my country when I reflect that God is just, that His justice cannot sleep forever.[7]

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[7] Quotations, Thomas Jefferson Mem'l, Nat'l Park Serv., U.S. Dep't of Interior, https://www.nps.gov/thje/learn/photosmultimedia/quotations.htm (last visited Dec. 20, 2018).

Two of Lincoln's most famous speeches—his Gettysburg Address and his Second Inaugural Address—are inscribed in his Memorial and include several references to God.[8] Indeed, the inscription above Lincoln's statue describes the Memorial itself as a "temple"—a word with obvious religious significance.[9]

Arlington National Cemetery, which is owned and operated by the Department of the Army, includes two memorial crosses much like the Peace Cross. The Argonne Cross was erected in 1923 and commemorates American soldiers who perished in Europe during World War I,[10] and the Canadian Cross of Sacrifice was dedicated in 1927 and remembers Americans who enlisted in the Canadian

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[8] Lincoln Mem'l Inscriptions, Nat'l Park Serv., U.S. Dep't of Interior, https://www.nps.gov/linc/learn/historyculture/inscriptions.htm (last visited Dec. 20, 2018) ("[T]his nation, under God, shall have a new birth of freedom" (Gettysburg Address); "Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said 'the judgments of the Lord are true and righteous altogether.'" (Second Inaugural Address)).

[9] *Id.* The inscription reads, "In this Temple as in the hearts of the people for whom he saved the Union the memory of Abraham Lincoln is enshrined forever."

[10] Argonne Cross (WWI), Arlington Nat'l Cemetery, https://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Argonne-Cross (last visited Dec. 20, 2018).

military and perished in World War I, World War II, and the Korean War.[11]

Other government buildings similarly contain religious references and messages. Prominent statues in the Department of Justice and outside this Court incorporate the Ten Commandments, a sculpture in the Library of Congress features a quote from the Old Testament, a doorway in the Chamber of the United States House of Representatives bears a plaque depicting Moses, a 24-foot-tall sculpture containing a cross stands outside the lower federal courthouse in the District of Columbia, *Van Orden*, 545 U.S. at 688-89, and the United States Capitol Building houses a Congressional Prayer Room with stained glass windows declaring the motto "Annuit Coeptus" ("God has favored our undertakings") and the words of Psalm 16:1 ("Preserve me, O God, for in thee do I put my trust.").[12]

Our national history—embodied in the physical record of our public buildings—and this Court's decisions both attest that the Constitution does not require the government to remove any monument on its land that might incorporate a religious symbol. The Peace Cross' use of religious

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[11] Canadian Cross of Sacrifice (WWI / WWII / Korea), Arlington Nat'l Cemetery, https://www.arlingtoncemetery.mil/Explore/Monuments-and-Memorials/Canadian-Cross (last visited Dec. 20, 2018).

[12] Congressional Prayer Room, Office of the Chaplain, United States House of Representatives, https://chaplain.house.gov/religion/prayer_room.html (last visited Dec. 20, 2018).

imagery to serve a civic commemorative function is no reason to tear it down.

II. The Peace Cross's History And Civic Function Weigh Strongly In Favor Of Allowing The Memorial to Stand.

A. The Peace Cross's Near-Century Without Challenge Is A Key Factor In The Establishment Clause Analysis.

Tradition is a foundational element of Establishment Clause analysis. *See, e.g.*, *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 678 (1970) ("an unbroken practice . . . is not something to be lightly cast aside"); *County of Allegheny v. Am. Civil Liberties Union*, 492 U.S. 573, 670 (1989) (Kennedy, J., concurring in the judgment in part and dissenting in part) ("A test for implementing the protections of the Establishment Clause that, if applied with consistency, would invalidate longstanding traditions cannot be a proper reading of the Clause."); *Town of Greece*, 572 U.S. 565, 603 (2014) (Alito, J., concurring) ("[I]f there is any inconsistency between any of those tests and the historic practice of legislative prayer, the inconsistency calls into question the validity of the test, not the historic practice."). Since before *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and through its most recent cases, this Court has treated the history of the challenged memorial or practice as an essential factor in its Establishment Clause jurisprudence. *See Walz*, 397 U.S. at 676 (citing *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921))

("As Mr. Justice Holmes commented in a related context, 'a page of history is worth a volume of logic.'"); *Town of Greece, N.Y. v. Galloway*, 572 U.S. at 587 ("The prayer opportunity in this case must be evaluated against the backdrop of historical practice.").

In cases assessing the constitutionality of memorials, longevity can be determinative. In *Van Orden*, Justice Breyer's controlling concurrence explained that the monument's 40 unopposed years "suggest more strongly than can any set of formulaic tests that few individuals, whatever their system of belief, are likely to have understood the monument as amounting, in any significantly detrimental way," to an endorsement of religion. 545 U.S. at 679 (Breyer, J., concurring). While other factors weighed in favor of the monument's permissibility, the monument's four decades without challenge were the "determinative factor" in the conclusion that the monument did not violate the Establishment Clause. *Id.*

Five years later, a plurality of this Court cited *Van Orden* when evaluating the proposed transfer of a memorial cross on public land. The plurality explained that time had "played its role" in upholding the land transfer, noting that the memorial cross had stood for almost 70 years. Given the passage of time, "the cross and the cause it commemorated had become entwined in the public consciousness." *Salazar*, 559 U.S. at 716.

Most recently, in *Town of Greece*, the Court reaffirmed its commitment to examining

longstanding historical practice in Establishment Clause cases. There, the Court explained "that the Establishment Clause must be interpreted 'by reference to historical practices and understandings.'" 572 U.S. at 576 (2014) (citing *County of Allegheny*, 492 U.S., at 670 (Kennedy, J., concurring in the judgment in part and dissenting in part)). The Court discussed practices including the Pledge of Allegiance, inaugural prayer, and the recitation of "God save the United States and this honorable Court" that have become "part of our heritage and tradition, part of our expressive idiom." *Id.* at 587 (citations omitted). Rather than excising references to religion from the shared American tradition, the Court explained that the Establishment Clause must be applied in a way that is consistent with permitting longstanding practices to continue, even if those practices include some religious content. *Id.* at 576 (concluding that precedent mandates interpreting the Establishment Clause "by reference to historical practices and understandings") (internal citations omitted).

The longevity of the Peace Cross is a particularly salient factor in this case. It has stood more than five decades longer than the Ten Commandments monument in *Van Orden*, and almost a quarter century longer than the cross in *Salazar*. Given that the Ten Commandments' 40-year presence was "determinative," the Peace Cross's 93 years should carry special weight. Just as the passage of time caused the memorial cross and its message in *Salazar* to become "entwined in the public consciousness," 559 U.S. at 716, the Peace Cross's near-century in Bladensburg has fixed its

commemorative message in the memory of Prince George's County.

B. The History Behind The Peace Cross's Form Must Be Considered.

Memorials serve as tangible reminders of significant people and events, and guard against loss of the collective memory of those people and events by linking the past with the present. They unite those who experienced an event firsthand with those who did not, serving "as a repository for a collective social and cultural memory." Michael H. Koby & Ash Jain, *Memorializing Our Nation's Heroes: A Legislative Proposal to Amend the Commemorative Works Act*, J.L. & POL. 99, 134 (2001) (citation omitted). The form a memorial takes is inherently expressive, reflecting how the community wishes its collective experience to be remembered. *See, e.g.*, *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 470 (2009) ("A monument, by definition, is a structure that is designed as a means of expression."); *see also* James M. Mayo, *War Memorials as Political Memory*, 78 Geographical Review 62, 68-70 (1988)).

A monument's physical form is particularly significant for war memorials built by those who lived through the war. "Society reflects what it values and what it wants to remember about war in the social and physical settings that exist for sacred and nonsacred memorials. War memorials not only evoke war history but also serve the more important function of conjuring the history that society wants to remember." Mayo, *supra*, at 72.

In the years following World War I, crosses were one such culturally significant symbol. Although crosses had religious significance, during World War I they were also associated with soldiers who had died overseas. *See, e.g.*, G. Kurt Piehler, *Remembering War the American Way* 101 (2014); G. Kurt Piehler, *The American Memory of War*, *in* The American Experience of War 232 (2010). As crosses marked the grave sites of fallen American soldiers overseas, the cross shape became a powerful image of the price of the war. As this Court has noted, a large Latin cross "evokes far more than religion"; "[i]t evokes thousands of small crosses in foreign fields marking the graves of Americans who fell in battles, battles whose tragedies are compounded if the fallen are forgotten." *Salazar*, 559 U.S. at 721 (plurality opinion); *see also id.* at 715 (plurality opinion) ("Although certainly a Christian symbol, the cross was not emplaced on Sunrise Rock to promote a Christian message . . . Rather, those who erected the cross intended simply to honor our Nation's fallen soldiers.").

The Peace Cross follows in that tradition, evoking the cross-shaped graves of the fallen soldiers of Prince George's County, Maryland. Its symbolism reflects more than ideas of war death and sacrifice, however. It reflects the reality of the burials of specific soldiers it names. Some of those soldiers, including family members of at least two *amici*, died overseas and were buried in cross-marked graves. App.4, 6. The Peace Cross therefore symbolically links these soldiers to cross-marked gravesites overseas.

The Fourth Circuit's emphasis on the size of the cross misses the point. *Am. Humanist Ass'n v. Maryland-Nat'l Capital Park & Planning Comm'n*, 874 F.3d 195, 207 (4th Cir. 2017), *cert. granted sub nom. The Am. Legion v. Am. Humanist Ass'n, No.* 17-1717, (U.S. Nov. 2, 2018), and *cert. granted*, No. 18-18, (U.S. Nov. 2, 2018). A cross only a few feet tall would hardly draw the attention of passersby to the sacrifices made by the Prince George's County residents memorialized thereon. Further, the Peace Cross's size is necessary for its commemorative purpose. Its scale calls to mind, and symbolically aggregates, the many small wooden crosses that dotted the French countryside during World War I. *See Salazar*, 559 U.S. at 725 (Alito, J., concurring) ("the original reason for the placement of the cross was to commemorate American war dead and, particularly for those with searing memories of The Great War, the symbol that was selected, a plain unadorned white cross, no doubt evoked the unforgettable image of the white crosses, row on row, that marked the final resting places of so many American soldiers who fell in that conflict."); *see also* Mayo, *supra*, at 68.[13] Indeed, in a letter to Senator John Walter Smith, Mrs. Martin Redman—the mother of one of the soldiers remembered on the Peace Cross—wrote that because her son, William F.

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[13] The Fourth Circuit's emphasis on the size of the cross is flawed for another reason: it presupposes there is some height above which a cross-shaped memorial on public land must be dismantled and below which it can stand. But tape measures are not tools for Constitutional analysis and this notion finds no support in the text or history of the Establishment Clause.

Redman, had died in France, she felt that "our memorial cross is, in a way, his grave stone." JA 989.

C. Allowing Longstanding Memorials Is Particularly Important in Cases Like This, Where People Would Be Harmed By The Memorial's Destruction.

While history is always relevant to an Establishment Clause claim, tradition plays an especially weighty role where, as in this case, tangible harm would result from losing a longstanding reminder of community and family sacrifice. This Court has emphasized the need to tread carefully if tearing down a memorial would evidence hostility and disrespect to those honored thereon. In *Salazar*, the plurality considered the fact that the destruction of a cross-shaped memorial would visit substantial harm on an identifiable group. After discussing the nearly seventy-year history of the memorial cross, the plurality concluded that the government could not remove the memorial cross "without conveying disrespect for those the cross was seen as honoring." *Salazar*, 559 U.S. at 716; *see also id.* at 726 (Alito, J., concurring) (noting that the removal of the cross, which "had stood on Sunrise Rock for nearly 70 years," would have been "viewed by many as a sign of disrespect" to the soldiers it was meant to honor and would have been seen by some as a sign that the government was "hostile on matters of religion"). Given the cross's lengthy history and memorial significance, removing it would have unavoidably conveyed hostility toward

religion and disrespect toward those who gave their lives in World War I.

Similarly, the controlling opinion in *Van Orden* considered the impact of a monument's removal on the community, expressing concern that its destruction would engender "religiously based divisiveness." 545 U.S. at 704 (Breyer, concurring); *see also Town of Greece*, 572 U.S. at 577 (citing *id.*, 545 U.S. at 677 (Breyer, J., concurring in judgment)) ("A test that would sweep away what has so long been settled would create new controversy and begin anew the very divisions along religious lines that the Establishment Clause seeks to prevent."); *Salazar*, 559 U.S. at 727 (Alito, J., concurring) (emphasizing the importance of "avoiding the disturbing symbolism associated with the destruction" of a war memorial).

Dismantling or disfiguring the Peace Cross would display deep disrespect towards both the soldiers named on the memorial and their family members. The pain that would be inflicted on *amici* stands in stark contrast to any passing feelings of discomfort petitioners may experience.[14] *See Van*

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[14] The Fourth Circuit described Plaintiffs as "non-Christian residents of Prince George's County who have faced multiple instances of unwelcome contact with the Cross. Specifically, as residents they have each regularly encountered the Cross while driving in the area, believe the display of the Cross amounts to governmental affiliation with Christianity, are offended by the prominent government display of the Cross, and wish to have no further contact with it." *Am. Humanist Ass'n v. Maryland-Nat'l Capital Park & Planning Comm'n*, 874 F.3d 195, 207 (4th (continued...)

Orden, 545 U.S. at 695 (Thomas, J., concurring) ("the litigants are mere [p]assersby . . . free to ignore [such symbols or signs], or even to turn their backs, just as they are free to do when they disagree with any other form of government speech") (internal quotation marks and citations omitted). As Ms. Laquay explained, even though she knows that those remembered by the memorial are not buried there, tearing down the cross would be akin to defiling their graves.

For nearly a century, the Peace Cross has stood as a memorial, a representative gravesite, and a tribute to the men it honors. In contrast to the "religiously based divisiveness" its destruction would provoke, the Peace Cross has for many decades brought families and communities together to remember the sacrifices and service of the soldiers of Prince George's County. Consistent with its precedents, this Court should conclude that the Peace Cross may stand for future generations.

Cir. 2017), *cert. granted sub nom. The Am. Legion v. Am. Humanist Ass'n*, No. 17-1717, and *cert. granted*, No. 18-18.

CONCLUSION

For the foregoing reasons, the judgment of the Fourth Circuit should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX INDEX

Burial for War Hero, EVENING STAR, Jan. 13, 1921 ..... App-1

Telegram addressed to Annie Seaburn (Nov. 21, 1918) (on file with Prince George's African American Museum and Cultural Center at North Brentwood) App-2

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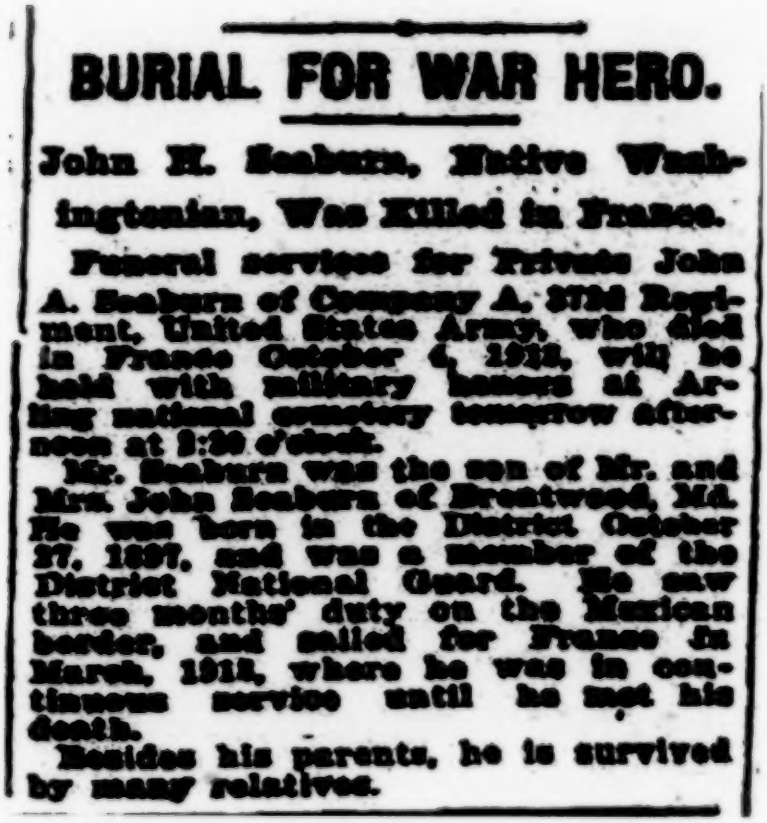


BURIAL FOR WAR HERO.

John H. Seaburn, Native Washingtonian, Was Killed in France.

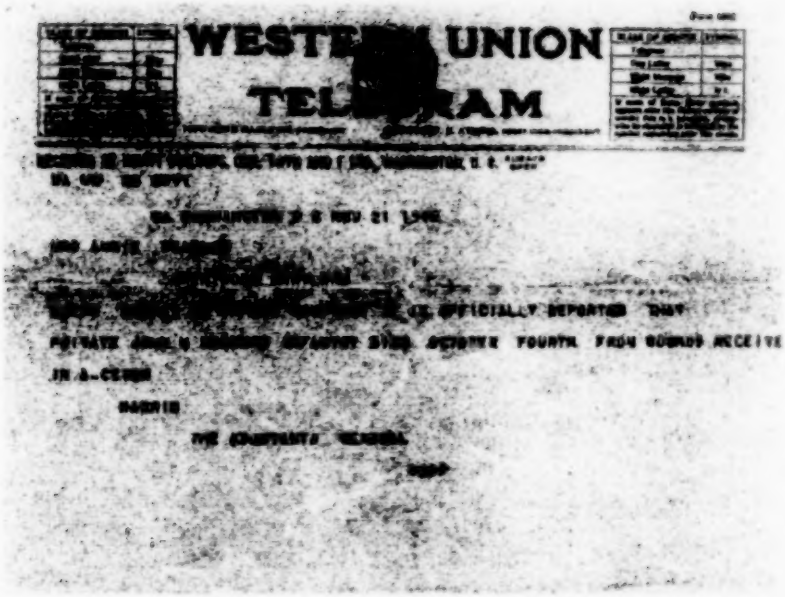
Funeral services for Private John A. Seaburn of Company A, 372d Regiment, United States Army, who died in France October 4, 1918, will be held with military honors at Arlington national cemetery tomorrow afternoon at 1:30 o'clock.

Mr. Seaburn was the son of Mr. and Mrs. John Seaburn of Brentwood, Md. He was born in the District October 27, 1897, and was a member of the District National Guard. He saw three months' duty on the Mexican border, and sailed for France in March, 1918, where he was in continuous service until he met his death.

Besides his parents, he is survived by many relatives.

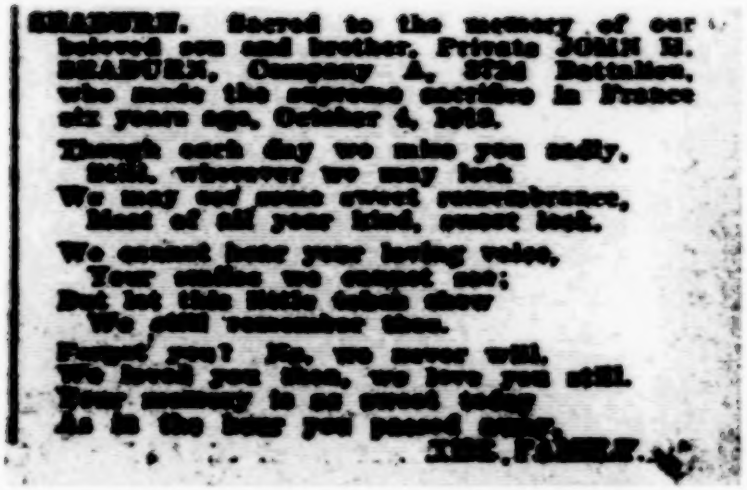
Announcement of John Henry Seaburn's Burial in Arlington National Cemetery, published in the EVENING STAR[1]

[1] *Burial for War Hero*, EVENING STAR, Jan. 13, 1921.



Telegram Received by Mrs. Annie Seaburn, John Seaburn's mother[2]

[2] Telegram addressed to Annie Seaburn (Nov. 21, 1918) (on file with Prince George's African American Museum and Cultural Center at North Brentwood).



SEABURN. Sacred to the memory of our beloved son and brother, Private JOHN H. SEABURN, Company A, 372d Battalion, who made the supreme sacrifice in France six years ago, October 4, 1918.

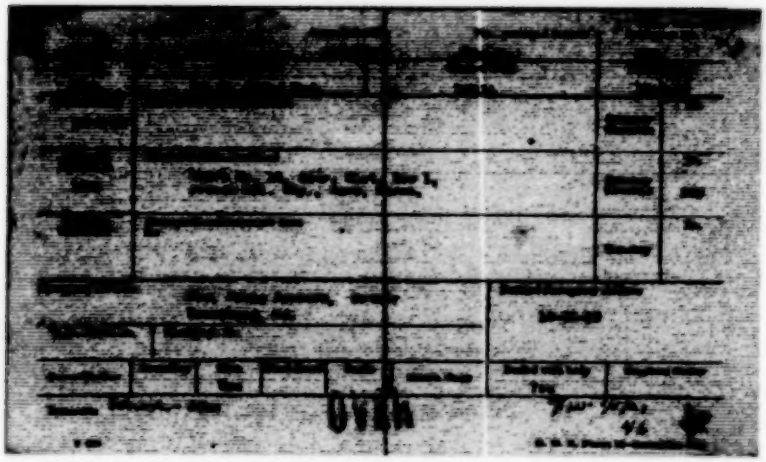
Though each day we miss you sadly,
Still, wherever we may look
We may see some sweet remembrance,
Most of all your kind, sweet look.

We cannot hear your loving voice,
Your smiles we cannot see;
But let this little token show
We still remember thee.

Forget you? No, we never will.
We loved you then, we love you still.
Your memory is as sweet today
As in the hour you passed away.

Poem in memory of John Henry Seaburn, published in the EVENING STAR[3]

[3] In Memoriam, EVENING STAR, Oct. 4, 1924.



Burial Card of John Henry Seaburn, indicating that a cross marked his grave in Auve, Marne, France[1]

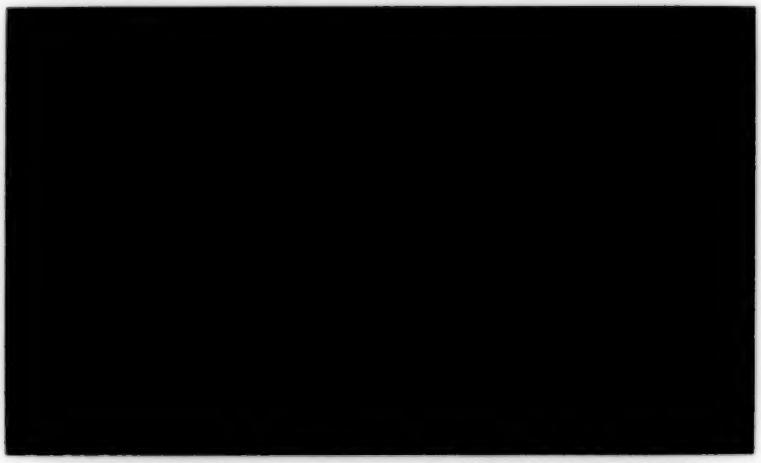
[1] Burial Card of John Henry Seaburn (on file with the National Archives).

THOMAS N. FENWICK.

Thomas Notley Fenwick, son of Ignatius C. and Pearl C. Fenwick, of Hyattsville, Md., who died at one of the base hospitals in France of pneumonia as a result of being gassed while at the front, will be buried at Arlington tomorrow. Young Fenwick was a first class private in the 115th infantry, machine gun company, and prior to going overseas was a member of old company F, Maryland national guard, of Hyattsville. Members of Snyder-Farmer Post, American Legion, of Hyattsville, will attend the funeral in a body and the woman's auxiliary to the old company also will be represented. Fenwick was well known in local athletic circles. He was for several years one of the mainstays of the pitching staff of the Hyattsville nine. Before his army service he served for some time in the navy.

Announcement of Thomas N. Fenwick's Burial in Arlington National Cemetery, published in the WASHINGTON TIMES[5]

[5] *Thomas N. Fenwick*, WASH. TIMES, Jan. 13, 1921.



Burial Card of Thomas Notey Fenwick, indicating that a cross marked his graves in Mars-sur-Allier and Nevers, Nievre, France[6]

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[6] Burial Card of Thomas Notley Fenwick (on file with the National Archives).